# STATE OF MICHIGAN

# COURT OF APPEALS

---

ESTATE OF ANTON DREW GEIL, Deceased, THERESA M. GEIL, and FREDERICK C. GEIL, Individually and as Next of Friend of CONNOR G. GEIL and CELESTE A. GEIL, Minors,

Plaintiffs-Appellees,

v

GRATA, a/k/a GRAND RAPIDS AREA TRANSIT AUTHORITY, a/k/a INTERURBAN TRANSIT PARTNERSHIP, a/k/a THE RAPID, CARRIE JEAN SANDERS, and CITY OF WYOMING,

Defendants,

and

KENT COUNTY ROAD COMMISSION,

Defendant-Appellant.

UNPUBLISHED
January 30, 2007

No. 263532
Kent Circuit Court
LC No. 04-005185-NI

---

Before: Murray, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Defendant Kent County Road Commission (Defendant) moved for sanctions against plaintiffs under both the court rule, MCR 2.114, and statute, MCL 600.2591. The trial court, which was intimately familiar with the facts and arguments made throughout this case, denied the motion, briefly setting forth on the record several reasons for its decision. Defendant appeals by leave granted, and we affirm.

This wrongful death action arose from the death of Anton Geil in an accident that occurred at the intersection of Byron Center Avenue and Porter Street in the city of Wyoming on July 31, 2002. The decedent was a pedestrian or bicyclist hit by a Grand Rapids Transit Authority bus. Plaintiffs originally filed their complaint against The Grand Rapids Area Transit Authority (GRATA), but GRATA filed a notice of nonparty fault on September 7, 2004, asserting that the design of the intersection, and the failure to maintain the crosswalk signals,

caused or contributed to the plaintiffs' injuries, and that the city of Wyoming and/or defendant road commission was responsible for same.

Plaintiffs filed a motion to strike the notice on the ground that GRATA failed to comply with MCR 2.112(K)(3)(a), which provides that "[a] party against whom a claim is asserted may give notice of a claim that a nonparty is wholly or partially at fault." Plaintiffs claimed that GRATA simply stated that either the city of Wyoming or defendant road commission, or both, were responsible for the design and maintenance of the intersection, and the installation of appropriate traffic lights and crosswalk signals at the intersection. Plaintiffs also alleged that GRATA failed to provide the last known addresses of the nonparties. The trial court denied the motion without prejudice.

Plaintiffs subsequently amended their complaint, adding counts against defendant and the city of Wyoming. Pertinent to this appeal, plaintiffs alleged that defendant was vicariously liable for the decedent's injuries by virtue of a contractual agreement with GRATA. The complaint also alleged that defendant had authority over the streets of the intersection where the accident took place, and that defendant breached its duty to the public by failing to design, construct, or maintain appropriate traffic signals or devices, making the intersection inherently dangerous.

Defendant moved the trial court for summary disposition and sanctions, arguing that it had no vicarious liability for the acts of GRATA because no contractual relationship existed between them. Defendant also argued that it was not liable for any alleged malfunction of traffic lights, or for improper design of the intersection, because it had no jurisdiction over the intersection. Finally, defendant argued that it had statutory immunity pursuant to the Governmental Tort Liability Act, MCL 691.1401 *et seq.*, and that plaintiffs' claims were barred by the statute of limitations, and by plaintiffs' failure to provide the required notice to defendant pursuant to MCL 691.1404.

At the same time, defendant separately moved for sanctions, alleging that plaintiffs had no evidence that the intersection was designed improperly or that the traffic lights did not function properly, that plaintiffs' expert informed counsel of that opinion before they filed their complaint, and that defendant had no jurisdiction over the intersection. The trial court denied the motion, essentially concluding that it would not be just to award sanctions and the amended complaint was not frivolous.

We agree with defendant's assertion that although MCR 1.105 can be utilized as an interpretive tool when reading a court rule such as MCR 2.114, it has no bearing on the application of a statute, and in particular MCL 600.2591. Nevertheless, we conclude that the trial court made a separate determination that plaintiffs' first amended complaint was not frivolous under either the statute or court rule.

After initially, and improperly, indicating that it would not be "just" to impose sanctions in light of MCR 1.105, the court went on to conclude that the action was not frivolous:

> I understand and comprehend Mr. Behler's [defense counsel] arguments. I respectfully disagree with them. I don't believe that – I know frivolous, as the record will indicate, from an earlier proceeding, and I'm very willing to impose

> sanctions and have on many occasions in the past. I'm not going to in this case. I'm going to respectfully decline the invitation of the road commission to do so.
>
> I'm not going to say it's not a close call, because I think it is. And maybe on another day it goes in favor of the defendants and maybe the plaintiffs have to pay it. But not on this day. I believe that the defendants – or the plaintiffs were attempting to fairly and in proportion to responsibility assess liability, trying to get around *Nawrocki*, but they weren't able to. The road commission is going to be out, but I'm not going to impose sanctions. I'm going to respectfully decline that.

Although we may not have ruled as did the trial court if we had originally decided this matter, we cannot conclude the trial court clearly erred in holding that the action against defendant was not frivolous.

MCL 600.2591 sets forth three separate ways an action can be found to be frivolous: (1) the primary purpose in initiating the action was to harass, embarrass or injure the opposing party; (2) the party had no reasonable basis to believe that "the facts" underlying the legal position were true; and (3) the party's legal position was devoid of arguable legal merit. MCL 600.2591(3)(a)(i-iii). MCR 2.114 contains similar provisions, requiring *inter alia*, an attorney to make a reasonable inquiry that the document is well-grounded in fact. MCR 2.114(E)(2).

Defendant forcefully argues that, based on plaintiffs' answers to the requests for admission, plaintiffs had made no reasonable inquiry into whether there was factual support for the claim, and that there was no factual or legal support for this claim. Plaintiffs, on the other hand, argue that being informed by another governmental entity – here GRATA - that the county had responsibility for the area where the accident occurred was a sufficient factual basis for the claim against the county.[1] Plaintiffs also argue that they had little other reasonable alternative given the procedural posture of the case.

The trial court agreed with plaintiffs, concluding that (1) plaintiffs acted reasonably when suing defendant after receiving the non-party at fault notice filed by the city of Wyoming; and (2) plaintiffs made an attempt to distinguish this case from *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143, 158; 615 NW2d 702 (2000). In light of this, the trial court concluded the action was not frivolous, and denied the motion for sanctions.

Review of the trial court's determination that the action against the county was not frivolous is not de novo. Instead, we review a finding of frivolousness for clear error. *Lakeside Oakland Development, LC v H&J Beet Co*, 249 Mich App 517, 532; 644 NW2d 765 (2002). If upon review we are left with a definite and firm conviction that a mistake was made in finding the action was not frivolous, we must reverse. *Contel Systems Corp v Gores*, 183 Mich App 706,

---

[1] The notice of non-parties at fault indicated that either the county or city of Wyoming or both "are responsible for the design and maintenance of the intersection . . . [and] for the installation of appropriate traffic lights and pedestrian crosswalk signals at this intersection."

711; 455 NW2d 398 (1990). After review of the arguments and the trial court's finding, we are not left with such a definite and firm conviction.

Instead, like the trial court, we view this issue as a close one. It is certainly true that plaintiffs did not locate or otherwise uncover independent facts that established the county's jurisdiction over the roadway at issue. But it is also true that plaintiffs were notified by a pleading filed in this case that the transit authority believed that the county was at least partially at fault for the accident, and had jurisdiction and responsibility for the intersection. So, there was *some* basis for plaintiffs to amend the complaint and add the county as a defendant. That fact, coupled with the legal posture the case took once the non-party at fault notice was filed and not stricken,[2] supported a finding that the filing was not frivolous.[3]

In reaching this conclusion, we have not in the least bit discounted defendant's well-presented arguments. Certainly plaintiffs had the time to search for additional facts between receipt of the notice and when a filing had to be made, and obviously the trial court ultimately held that defendant's legal position was correct and dismissed defendant from the case. See *Louya v William Beaumont Hosp*, 190 Mich App 151, 163; 475 NW2d 434 (1991) (fact party did not prevail on claim does not make it frivolous). Our point is simply that the trial court did not "clearly err" in finding the claim against defendant was not frivolous.

Affirmed.

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens

---

[2] Indeed, the trial court denied the motion to strike without prejudice, leaving plaintiff with the option of reviewing the motion at a later time or suing a party potentially liable to his client.

[3] We are not asked to review the merits of that dismissal, so it is difficult to conclude that the trial court erred when finding that plaintiff made a good faith attempt to distinguish *Nawrocki*.